

### REMARKS

Claims 10-21 are active. Page 2 of the specification has been revised to delete the word "claims" and incorporate the material disclosed in original Claims 1-7. New Claims 10-21 find support as follows: Claims 10-14 (Claims 4-5, page 9), Claims 15-19 (Claim 7, page 8, lines 13-15), and Claims 20-21 (Claim 7, page 9, lines 28 *ff.*). Accordingly, the Applicants do not believe that any new matter has been added. Favorable consideration of this amendment and allowance of this application is now respectfully requested.

### Restriction/Election

The Applicants previously elected with traverse, Group I, Claims 1-5, directed to products (microorganisms). The Applicants thank Examiner Meah for rejoining the method claims of Group II.

### Rejection—35 U.S.C. §112, first paragraph

Claims 1-3 and 6-9 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate description. This rejection is moot in view of the cancellation of these claims. It would not apply to the new claims which are directed to the subject matter of Claims 4-5, which were not rejected.

### Rejection—35 U.S.C. §112, first paragraph

Claims 1-9 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate enablement. This rejection is moot in view of the cancellation of Claims 1-9. It would not apply to the present claims which are directed to products and methods based on use of deposited strains of microorganisms and strains derived from the deposited strains which have the same genes inactivated or deleted.

Statement Regarding Deposit

The microorganisms identified by DSM 15181 and DSM 15182 were deposited under the terms of the Budapest Treaty. As required by 37 C.F.R. 1.808, subject to the one exception permitted by 37 C.F.R. 1.808(b), all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon granting of the patent. See MPEP 2410.01.

Rejection—35 U.S.C. §103

Claims 1-3 and 6-9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Altenbucher et al., U.S. Patent No. 6,800,464, in view of Marceau, J.B.C. 32:16916. This rejection is moot in view of the cancellation of Claims 1-9 and would not apply to the present claims which refer to deposited strains DSM 15181 and 15182 in which *dadA* (the gene encoding D-amino acid oxidase) is inactivated or deleted.

With respect to Marceau which is indicated as describing *E. coli* mutants that virtually inactivate DSD (page 16926, 2<sup>nd</sup> col., line 3), the strains of the present invention are required to have either a *dadA* mutation or a *dadA* and *dsdA* mutation. Marceau does not disclose strains having a *dadA* mutation. Accordingly, the cited prior art does not disclose the strains required by the present invention and this rejection may be withdrawn.

Conclusion

In view of the above amendments and remarks, the Applicants respectfully submit that this application is now in condition for allowance. Early notification to that effect is earnestly solicited.


Respectfully submitted,

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